IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 827 OF 2004

Rampher Devtadin Nai .. Appellant

Vs.

Ramkripal Devtadin Nai .. Respondent

Ms.Anita Dwivedi h/f Mr. R.S. Dwivedi for appellant.
Mr. S.V. Rajeshwar i/by Legal Apex for Respondent.

CORAM: B.H. MARLAPALLE, J.

Date : June 15, 2005.

P.C.:

1. Heard Ms. Anita Dwivedi with Mr. R.S. Dwivedi the learned counsel for the appellant-plaintiff in S.C. Suit No.4590/03 and Mr. Rajeshwar the learned counsel for the respondent-defendant.

2. Notice of Motion No.3748 of 2003 was taken out in the said suit for a temporary injunction restraining the defendant from creating any third party interest in the suit property i.e. Room No.707 located in Building No.1, Sundar Nagar, S.B. Marg, Dadar (W), Bombay - 400 028. By the impugned order

dated 20-7-2004 the learned Judge was pleased to dismiss the Notice of Motion with cost at Rs.300/- and the ad-interim injunction granted earlier came to be vacated.

3. There is no dispute that Ramsevak, Rampher and Ramkripal are the three real borthers and Ramsevak, the eldest one died on 2-4-2003. He was a bachelor and owner of the suit room. The suit room has been in possession of the defendant Ramkripal. The plaintiff Rampher claimed that he has an equal share in the said room along with the defendant Ramkripal and, therefore, the suit has been filed for such a declaration and claim for half share in the suit room. Admittedly, he is not in possession of any documentary evidence to show that the same room was allotted to him or was given to him by the deceased brother. On the other hand, the defendant in his Written Statement pointed out that the deceased brother had filed S.C. Suit No.4692/1999 through the present plaintiff as his Power of Attorney holder and during the pendency of the suit Ramsevak died on 2-4-2003 but the suit was

not prosecuted by the plaintiff and thereafter it was dismissed on 29-7-2002. It was further stated that by an affidavit dated 17-1-1998 and by the general Power of Attorney dated 17-1-1998 executed by deceased Ramsevak suit room admeasuring 10 x 12 ft. was transferred with all its right, title and interest in favour of the defendant. In S.C. Suit No.4692/1999 a declaration was sought in respect of these documents as being illegal, void and bogus. For the same relief the present suit i.e. S.C. Suit No.4590/2003 has been filed by the plaintiff. It was under these circumstances the learned Judge of the trial court held that there was no prima facie case made out by the plaintiff to grant any restraining order as prayed for against the defendant. The view taken by the trial court is supported by proper reasoning and, therefore, it does not call for any interference in this appeal.

4. Hence, the appeal is dismissed in limine.

(B.H. Marlapalle,J.)